

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
AT RICHMOND, AUGUST 9, 2007

PETITION OF

ANTHEM HEALTH PLANS OF VIRGINIA, INC.
HEALTHKEEPERS, INC.
PRIORITY HEALTH CARE, INC.
PENINSULA HEALTH CARE, INC.
WELLPOINT, INC.
ANTHEM SOUTHEAST, INC.,

CASE NO. INS-2007-00141

For Amendment of Final Order in
Case No. INS-2002-00131.

FINAL ORDER

On April 20, 2007, Anthem Health Plans of Virginia, Inc., HealthKeepers, Inc., Priority Health Care, Inc., Peninsula Health Care, Inc., WellPoint, Inc., and Anthem Southeast, Inc. (collectively the "Petitioners" or "Anthem"), filed a Petition under Rule 5 VAC 5-20-80 of the State Corporation Commission's ("Commission") Rules of Practice and Procedure. The Petitioners request that the Commission relax certain conditions imposed when the Commission approved the acquisition and control of the insurers and health maintenance organization subsidiaries of Trigon Healthcare, Inc. by Anthem, Inc. in Case No. INS-2002-00131 ("Final Order").¹ In the Final Order, the Commission required that Anthem cause the following services to be provided from offices located in Virginia unless the Bureau of Insurance ("Bureau") gives its prior written approval that these services may be provided outside the Commonwealth: claims processing and case management, customer service, actuarial, underwriting, marketing,

¹ See *Application of Anthem, Inc. and Trigon Healthcare, Inc.*, Case No. INS-2002-00131, 2002 SCC Ann. Rept. 118 (Final Order, July 19, 2002).

quality management, community relations, distribution management, sales, provider services, medical management, and network development.²

The Petitioners assert that the health care industry has changed dramatically since the Final Order was entered nearly five years ago. They also contend that the highly localized model of four years ago cannot be expected to remain stagnant in the changing industry. The Petitioners also note that five new Blue Cross and Blue Shield licensed companies have joined the WellPoint, Inc. holding company system,³ and there is a strong desire to achieve further cost reductions and efficiencies. The Petitioners argue that maintaining duplication simply to satisfy the desire for local function is a cost the health care system cannot afford.⁴ Finally, the Petitioners contend that no other insurance company or health maintenance organization is similarly restricted as to how to conduct their operations, and they believe that it is not in the customers' or the public's interest to continue the restrictions created by the condition in the Final Order. Accordingly, the Petitioners request an Order directing that the Final Order be amended as set forth in the Petition.

On April 26, 2007, the Commission entered a Scheduling Order, wherein it docketed this matter, directed the Petitioners to publish notice of the Petition in newspapers around the Commonwealth, provided for public comments in response to the Petition, and directed the Bureau to file a response to the Petition on or before June 15, 2007.

² *Id.* at 119.

³ On April 2, 2004, the Commission approved Anthem, Inc.'s and WellPoint Health Networks, Inc.'s Application for Approval of Acquisition of Control of or Merger with a Domestic Insurer or Health Maintenance Organization on Form A. See, *Application of Anthem, Inc. and WellPoint Health Networks Inc., For Approval of acquisition of control of or merger with a domestic insurer or health maintenance organization*, Case No. INS-2003-00263, 2004 SCC Ann. Rept. 72 (Final Order, April 2, 2004).

⁴ Petition at 4.

Hundreds of comments were filed in response to the Petition, the vast majority of which opposed the relief requested by Anthem. These comments were submitted both before and after the June 8, 2007 deadline set forth in the aforementioned Scheduling Order.

On May 22, 2007, the Medical Society of Virginia ("MSV"), which represents approximately 8700 physicians across the Commonwealth, filed its Objection to Petition and a Notice of Participation ("MSV Objections"). Therein, the MSV objects to the Petition, and it claims that Anthem has prospered since the Final Order was entered in 2002. The MSV asserts that Anthem has sought and received approval for "exception transactions" from the Bureau on four separate occasions since 2002 and has received approval of each of its requests. The MSV also contends that there is no compelling argument in the Petition to warrant amendment of the Final Order. The MSV notes that Anthem is the provider of the majority of health insurance coverage in Virginia, and removal of the conditions would allow Anthem to have monopoly-like powers.⁵ The MSV also argues that granting the Petition will lead to "confusion, frustration, poor customer service and a decrease in the effectiveness of the delivery of health care in Virginia."⁶ The MSV concludes by requesting that the Commission deny the Petition.

On June 6, 2007, the Virginia Dental Association ("VDA") filed the objections of the VDA, which were contained in a letter from Terry Dickinson, D.D.S, the Executive Director of the VDA. The VDA, on behalf of its 3200 members, objects to the Petition and indicates that the VDA wishes to preserve the protections included in the Final Order, so as "not to jeopardize the delivery of quality dental services to our patients and the citizens of this state." The VDA joins

⁵ MSV Objections at 4.

⁶ *Id.* at 5.

in the concerns expressed by the MSV and requests that the Commission deny the Petition. The VDA and the MSV also requested a public hearing on the Petition.

On June 8, 2007, the Division of Consumer Counsel, Office of the Attorney General ("Consumer Counsel"), filed comments ("Consumer Counsel Comments"). Consumer Counsel asserts that ample authority existed for the Commission to impose the conditions in the Final Order, and that evidence from that proceeding should be reviewed in determining whether to relax the conditions now. Consumer Counsel contends that Anthem previously expressed its commitment to and support for "running the business very much on a local basis."⁷ Consumer Counsel also argues that "[a] change in company philosophy alone does not justify the removal of the condition that was put in place to protect the interests of Virginia consumers."⁸ Consumer Counsel also contends that Anthem must prove that consolidating services outside of Virginia is in the best interests of the policyholders, enrollees, and the public, including health care providers located in Virginia. Consumer Counsel asserts that Anthem has failed to provide sufficient evidence to support its Petition. Consumer Counsel concludes by stating that, absent compelling evidence, the Commission should deny the Petition, or, in the alternative, maintain the condition as it relates to customer service and provider services.⁹

On June 14, 2007, the Bureau filed its response to the Petition ("Bureau Response"). Therein, the Bureau does not oppose the relief sought by Anthem. The Bureau contends that the four exception transactions that it has approved did not raise any issues with respect to Title 38.2 of the Code of Virginia and it appeared that the impact on policyholders, enrollees and the public

⁷ Consumer Counsel Comments at 3.

⁸ *Id.* at 4.

⁹ *Id.* at 6.

would be minimal or temporary. The Bureau requests that if the Commission denies the Petition in whole or in part, the Commission should amend the Final Order to remove the provisions authorizing the Bureau to grant exceptions to its terms. The Bureau asserts that it has no effective system for ascertaining the full impact of more significant transactions on policyholders, enrollees and the public, and that removal of the condition will require the Petitioners to seek modification directly from the Commission.¹⁰

On June 21, 2007, the Commission entered an Order Scheduling Hearing, in which it scheduled a hearing on July 10, 2007. On that date, the Commission convened a hearing to take public witness and other testimony on the Petition. Anthem, the MSV and the VDA, Consumer Counsel, and the Bureau all appeared at the hearing represented by counsel. Seventeen public witnesses testified at the hearing: The Honorable John O'Bannon, III, M.D.; The Honorable David A. Nutter; Anne Adams, D.D.S.; Craig Hensle, M.D.; Bill Lueck, M.D.; Charles Thomas; Tom Miller; Yevonne Childress; Bert Wilson; John E. Brush, M.D.; Patricia Reams, M.D.; Jeremiah O'Shea; Kimberly Anderson, M.D.; James Krag, M.D.; Robert S. Call, M.D.; The Honorable Shannon R. Valentine; and Mark Bergman, presenting remarks on behalf of the Honorable Ward L. Armstrong. All of the public witnesses opposed Anthem's Petition.

The following witnesses testified for Anthem: Angela Braly, President and CEO of WellPoint; Thomas Byrd, President and General Manager of Virginia local group business; and Colin Scott Drozdowski, Vice President Health Services.

NOW THE COMMISSION, having considered the record, including the comments, exhibits and documents filed herein, the testimony of the witnesses, and the argument of counsel, finds that Anthem's Petition should be granted in part and denied in part. We find that, pursuant

¹⁰ Bureau Response at 2.

to § 38.2-1327 of the Code of Virginia, Anthem's continued provision of certain services from offices located in the Commonwealth of Virginia is "necessary to protect the interests of the policyholders of the insurer and the public." We conclude that Anthem may provide the following services from offices located outside of the Commonwealth of Virginia: actuarial, underwriting, marketing, community relations, distribution management, and sales. We conclude that Anthem should be required to continue to provide the following services from offices located in the Commonwealth of Virginia: claims processing and case management, customer service, quality management, provider services, medical management, and network development.¹¹ Accordingly, the Petition is denied as to such services.

The foregoing denial is without prejudice. The Commission recognizes the changing nature of the health-care industry, particularly in regards to the use of technology to allow for consolidation of services, and the cost savings that can result from consolidation. Anthem is free in the future to file another petition with the Commission to remove these conditions if Anthem believes circumstances support such a petition. At that time, however, Anthem should submit with its petition a specific and detailed proposal for providing these services out of state, including specific and detailed information on *how* and *where* Anthem will provide these services, as well as safeguards for ensuring adequate levels of service.

The services that we are not allowing to be provided from outside the Commonwealth are those that involve daily and direct communication between Anthem and its enrolled customers or health-care providers in Virginia. Anthem has not met its burden of proof of persuading us that

¹¹ The evidence at the hearing demonstrated that certain services involve daily and direct communication and interaction with providers and customers. We are requiring that the six services ranked as having the most provider and customer interactions continue to be provided from offices located in the Commonwealth of Virginia. *See*, Transcript ("Tr.") at 332-341.

its plans - whatever they may be¹² - for providing such critically important services from outside the Commonwealth will not degrade the quality of communications and service to Virginians.

We are not ruling in this Order that these important services can never be provided from an out-of-state location under any circumstances. Indeed, we recognize that consolidation of services in the health-care industry can make health care delivery more efficient and cost-effective and that Anthem potentially could provide services from locations out-of-state that would be geographically closer to many Virginia providers and patients than its current service centers in Virginia. This issue is not about geography alone; it is about credible safeguards to ensure that the quality of communication and service to Virginians is not degraded. We cannot evaluate such safeguards without knowing exactly what Anthem's specific plans are to move such important services outside the Commonwealth.

Accordingly, IT IS ORDERED THAT:

(1) Anthem's Petition is GRANTED IN PART, AND DENIED IN PART.

(2) Anthem shall provide the following services from offices located in the Commonwealth of Virginia: claims processing and case management, customer service, quality management, provider services, medical management, and network development.

(3) Anthem may provide the following services from offices located outside of the Commonwealth of Virginia: actuarial, underwriting, marketing, community relations, distribution management, and sales.

¹² We note that, in this case, Anthem stated it had no plans at this time to move any of the twelve listed services in their entirety outside of the Commonwealth of Virginia. Tr. at 160-161, 181-183, 212-213, 231-232 (testimony of Angela Braly). However, we also note that Anthem witness Thomas Byrd indicated that Anthem did contemplate moving certain services outside of the Commonwealth of Virginia if the Petition was granted. See, Tr. at 258-263, 287-292 and Exhibit 5. By denying in part the Petition, we are requiring that Anthem provide advance notice to, and obtain permission from, the Commission, when it actually does plan to relocate any of the six services that are not permitted to be moved outside of the Commonwealth of Virginia at this time.

(4) The other provisions of the Final Order in Case No. INS-2002-00131 are not affected hereby and remain in full force and effect, except that if Anthem seeks to provide any of the services in Ordering Paragraph (2) from offices located outside of the Commonwealth of Virginia, it shall seek permission from the Commission by filing a petition with the Commission setting forth a specific and detailed proposal for providing such services out of state, including specific and detailed information on *how* and *where* Anthem will provide such services, as well as safeguards for ensuring adequate levels of service.

(5) This matter is dismissed and the papers herein be placed in the file for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the State Corporation Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, Virginia 23219.